

By: Price

H.B. No. 2673

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of individuals with intellectual and developmental disabilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 411.1144, Government Code, is amended to read as follows:

Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: AGENCIES WITH EMPLOYEES, CONTRACTORS, OR VOLUNTEERS AT STATE SUPPORTED LIVING CENTERS.

SECTION 2. Sections 411.1144(a) and (d), Government Code, are amended to read as follows:

(a) The Department of State Health Services, ~~and~~ the Department of Aging and Disability Services, and the Health and Human Services Commission are entitled to obtain from the department criminal history record information maintained by the department that relates to a person:

(1) who is:

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(C) a volunteer with the agency; ~~or~~

(D) an applicant for a volunteer position with the agency; or

(E) a person who contracts or may contract to provide goods or services to the agency; and

1 (2) who would be placed in direct contact with a
2 resident or client of a state supported living center, as defined by
3 Section 531.002, Health and Safety Code [~~or the ICF-MR component of~~
4 ~~the Rio Grande State Center~~].

5 (d) Subject to Section 411.087, the Department of State
6 Health Services, [~~and~~] the Department of Aging and Disability
7 Services, and the Health and Human Services Commission are entitled
8 to:

9 (1) obtain through the Federal Bureau of Investigation
10 criminal history record information maintained or indexed by that
11 bureau that pertains to a person described by Subsection (a); and

12 (2) obtain from any other criminal justice agency in
13 this state criminal history record information maintained by that
14 criminal justice agency that relates to a person described by
15 Subsection (a).

16 SECTION 3. The heading to Subchapter U, Chapter 531,
17 Government Code, is amended to read as follows:

18 SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH
19 INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

20 SECTION 4. Subchapter U, Chapter 531, Government Code, is
21 amended by adding Section 531.8501 to read as follows:

22 Sec. 531.8501. DEFINITION. In this subchapter, "contracted
23 organization" means an entity that contracts with the Health and
24 Human Services Commission for the provision of services as
25 described by Section 531.851(c).

26 SECTION 5. Sections 531.851(a), (c), (d), and (e),
27 Government Code, are amended to read as follows:

1 (a) The executive commissioner shall establish an
2 independent mortality review system to review the death of a person
3 with an intellectual or [a] developmental disability who, at the
4 time of the person's death or at any time during the 24-hour period
5 before the person's death:

6 (1) resided in or received services from:

7 (A) an intermediate care facility for persons
8 with an intellectual or developmental disability (ICF/IID) [~~mental~~
9 ~~retardation (ICF-MR)~~] operated or licensed by the Department of
10 Aging and Disability Services or a community center; or

11 (B) the ICF/IID [~~ICF-MR~~] component of the Rio
12 Grande State Center; or

13 (2) received services [~~residential assistance~~]
14 through a Section 1915(c) waiver program for [~~serving~~] individuals
15 who are eligible for ICF/IID [~~ICF-MR~~] services [~~in a residence in~~
16 ~~which residential assistance is provided to three or more persons~~
17 ~~and in which the waiver program provider has a property interest~~].

18 (c) The executive commissioner shall contract with an
19 institution of higher education or a health care organization or
20 association with experience in conducting research-based mortality
21 studies [~~a patient safety organization certified in accordance with~~
22 ~~42 C.F.R. Part 3, as effective on January 19, 2009,~~] to conduct
23 independent mortality reviews of persons with an intellectual or
24 developmental disability [~~required by this subchapter~~]. The
25 contract must require the contracted [~~patient safety~~] organization
26 to form a [~~conduct an independent mortality~~] review [~~using a~~] team
27 consisting of:

1 (1) a physician with expertise regarding the medical
2 treatment of individuals with intellectual or developmental
3 disabilities [~~mental retardation~~];

4 (2) a registered nurse with expertise regarding the
5 medical treatment of individuals with intellectual or
6 developmental disabilities [~~mental retardation~~];

7 (3) a clinician or other professional with expertise
8 in the delivery of services and supports for individuals with
9 intellectual or developmental disabilities [~~mental retardation~~];

10 and

11 (4) any other appropriate person as provided by the
12 executive commissioner.

13 (d) The executive commissioner shall adopt rules regarding
14 the manner in which the death of a person described by Subsection
15 (a) must be reported to the contracted [~~patient safety~~]
16 organization by a facility or waiver program provider described by
17 that subsection.

18 (e) To ensure consistency across mortality review systems,
19 a review under this section must collect information consistent
20 with the information required to be collected by any other
21 independent mortality review process established specifically for
22 persons with intellectual or developmental disabilities [~~mental~~
23 ~~retardation~~].

24 SECTION 6. Section 531.852, Government Code, is amended to
25 read as follows:

26 Sec. 531.852. ACCESS TO INFORMATION. (a) A contracted
27 [~~patient safety~~] organization may request information and records

1 regarding a deceased person as necessary to carry out the
2 contracted [~~patient safety~~] organization's duties. Records and
3 information that may be requested under this section include:

4 (1) medical, dental, and mental health care
5 information; and

6 (2) information and records maintained by any state or
7 local government agency, including:

8 (A) a birth certificate;

9 (B) law enforcement investigative data;

10 (C) medical examiner investigative data;

11 (D) juvenile court records;

12 (E) parole and probation information and
13 records; and

14 (F) adult or child protective services
15 information and records.

16 (b) On request of the contracted [~~patient safety~~]
17 organization, the custodian of the relevant information and records
18 relating to a deceased person shall provide those records to the
19 contracted [~~patient safety~~] organization at no charge.

20 SECTION 7. Section 531.853, Government Code, is amended to
21 read as follows:

22 Sec. 531.853. MORTALITY REVIEW REPORT. Subject to Section
23 531.854, a contracted [~~The patient safety~~] organization shall [~~to~~
24 ~~the extent allowed by federal law,~~] submit:

25 (1) to the Department of Aging and Disability
26 Services, the Department of Family and Protective Services, the
27 office of independent ombudsman for state supported living centers,

1 and the commission's office of inspector general a report of the
2 findings of the mortality review; and

3 (2) semiannually to the governor, the lieutenant
4 governor, the speaker of the house of representatives, and the
5 standing committees of the senate and house of representatives with
6 primary jurisdiction over the Department of Aging and Disability
7 Services, the Department of Family and Protective Services, the
8 office of independent ombudsman for state supported living centers,
9 and the commission's office of inspector general a report that
10 contains:

11 (A) aggregate information regarding the deaths
12 for which the contracted [~~patient safety~~] organization performed an
13 independent mortality review;

14 (B) trends in the causes of death identified by
15 the contracted [~~patient safety~~] organization; and

16 (C) any suggestions for system-wide improvements
17 to address conditions that contributed to deaths reviewed by the
18 contracted [~~patient safety~~] organization.

19 SECTION 8. Section 531.854, Government Code, is amended by
20 amending Subsections (a), (b), and (e) and adding Subsections (f)
21 and (g) to read as follows:

22 (a) The commission may use or publish information under this
23 subchapter only to advance statewide practices regarding the
24 treatment and care of individuals with intellectual and
25 developmental disabilities. A summary of the data in the
26 contracted [~~patient safety~~] organization's reports or a
27 statistical compilation of data reports may be released by the

1 commission for general publication if the summary or statistical
2 compilation does not contain any information that would permit the
3 identification of an individual or that is confidential or
4 privileged under this subchapter or other state or federal law
5 [~~patient safety work product~~].

6 (b) Information and records acquired by the contracted
7 [~~patient safety~~] organization in the exercise of its duties under
8 this subchapter are confidential and exempt from disclosure under
9 the open records law, Chapter 552, and may be disclosed only as
10 necessary to carry out the contracted [~~patient safety~~]
11 organization's duties.

12 (e) Reports, information, statements, memoranda, and other
13 information furnished under this subchapter to the contracted
14 organization and any findings or conclusions resulting from a
15 review by the contracted [~~patient safety~~] organization are
16 privileged.

17 (f) A contracted organization's report of the findings of
18 the independent mortality review conducted under this subchapter
19 and any records developed by the contracted organization relating
20 to the review:

- 21 (1) are confidential and privileged;
22 (2) are not subject to discovery or subpoena; and
23 (3) may not be introduced into evidence in any civil,
24 criminal, or administrative proceeding.

25 (g) A member of the contracted organization's review team
26 may not testify or be required to testify in a civil, criminal, or
27 administrative proceeding as to observations, factual findings, or

1 conclusions that were made in conducting a review under this
2 subchapter.

3 SECTION 9. Section 531.855, Government Code, is amended to
4 read as follows:

5 Sec. 531.855. LIMITATION ON LIABILITY. A health care
6 provider or other person is not civilly or criminally liable for
7 furnishing information to the contracted [~~patient safety~~]
8 organization or to the commission for use by the contracted
9 [~~patient safety~~] organization in accordance with this subchapter
10 unless the person acted in bad faith or knowingly provided false
11 information to the contracted [~~patient safety~~] organization or the
12 commission.

13 SECTION 10. Section 555.021, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR
16 EMPLOYEES, CONTRACTORS, AND VOLUNTEERS [~~OF CENTERS~~]. (a) The
17 department, [~~and~~] the Department of State Health Services, and the
18 Health and Human Services Commission shall perform a state and
19 federal criminal history background check on a person:

- 20 (1) who is:
- 21 (A) an applicant for employment with the agency;
 - 22 (B) an employee of the agency;
 - 23 (C) a volunteer with the agency; [~~or~~]
 - 24 (D) an applicant for a volunteer position with
25 the agency; or
 - 26 (E) a person who contracts or may contract to
27 provide goods or services to the agency; and

1 (2) who would be placed in direct contact with a
2 resident or client.

3 (b) The department, ~~[and]~~ the Department of State Health
4 Services, and the Health and Human Services Commission shall
5 require a person described by Subsection (a) to submit fingerprints
6 in a form and of a quality acceptable to the Department of Public
7 Safety and the Federal Bureau of Investigation for use in
8 conducting a criminal history background check.

9 (c) Each agency shall obtain electronic updates from the
10 Department of Public Safety of arrests and convictions of a person:

11 (1) for whom the agency performs a background check
12 under Subsection (a); and

13 (2) who remains an employee, contractor, or volunteer
14 of the agency and continues to have direct contact with a resident
15 or client.

16 SECTION 11. Section 252.134, Health and Safety Code, is
17 repealed.

18 SECTION 12. Section 531.851, Government Code, as amended by
19 this Act, does not apply to a contract entered into by the executive
20 commissioner of the Health and Human Services Commission before
21 June 1, 2013. A contract entered into before June 1, 2013, is
22 governed by the law in effect on the date the contract was entered
23 into, and that law is continued in effect for that purpose.

24 SECTION 13. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

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1 effect, this Act takes effect September 1, 2013.